

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

John Stoyka, Sr., Suzanne Willenborg, and
Barbara Medeiros

v.

Case Number: 03-06445
Hearing Site: Southfield, Michigan

Respondent/Third-Party Claimant

TD Waterhouse Investor Services, Inc.

v.

Third-Party Respondent

Bonnie Stoyka

NATURE OF DISPUTE

Customer v. Member v. Non-Member and Member v. Non-Member

REPRESENTATION OF PARTIES

John Stoyka, Sr., Suzanne Willenborg, and Barbara Medeiros ("Claimant") was represented by D. Michael Kratchman, Esq., Gourwitz and Barr PLLC, Southfield, Michigan.

TD Waterhouse Investor Services, Inc. ("Respondent") was represented by Miles D. Hart, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan

Bonnie Stoyka ("Third-Party Respondent") was represented by Dean J. Groulx, Esq., Hyman Lippitt, P.C., Birmingham, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about August 2, 2003. The Submission Agreement of John Stoyka, Sr., Suzanne Willenborg, and Barbara Medeiros was signed on or about August 5, 2003.

The Statement of Answer was filed by TD Waterhouse Investor Services, Inc. on or about May 11, 2004. The Submission Agreement of TD Waterhouse Investor Services, Inc. was signed on or about May 12, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty and negligence. Claimants alleged that Respondent inappropriately transferred assets to their late father's personal account instead of his trust account, resulting in the loss of their beneficial interest in the trust account upon their father's death.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants fail to state a claim upon which relief can be granted; Claimants already received the funds to which the claim to be entitled; and Claimants cannot establish transaction causation or loss causation.

RELIEF REQUESTED

Claimant requested an award in the amount of \$300,000, plus punitive damages, interest, costs, attorneys' fees, and additional damages as the panel deemed appropriate.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Third-Party Respondent Bonnie Stoyka is not associated with an NASD Member Firm nor was there a contract to arbitrate disputes with Bonnie Stoyka presented. In correspondence submitted on or about June 2, 2004, Bonnie Stoyka declined to voluntarily submit to NASD arbitration. Therefore, Bonnie Stoyka is not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Bonnie Stoyka's voluntary submission, NASD does not have jurisdiction over this party.

At the hearing, the parties requested that the panel resolve a single issue. The issue was, "Whether the Claimants proved that Mr. Stoyka (deceased) instructed TD Waterhouse Investment Services to transfer the assets in his individual account to his trust account?" The majority of the panel answered this question in the affirmative, that Claimants proved this issue.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Pursuant to their settlement agreement, Claimants have withdrawn and dismissed all claims with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and

- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
Third-Party Claim filing fee	= \$ 1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is TD Waterhouse Investor Services, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: August 31, 2004	1 session
One (1) Hearing session x \$1,125.00	= \$ 1,125.00
Hearing Date: March 7, 2005	1 session
Total Forum Fees	= \$ 2,250.00

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to John Stoyka, Sr., Suzanne Willenborg, and Barbara Medeiros.

The Arbitration Panel has assessed \$1,687.50 of the forum fees to TD Waterhouse Investor Services, Inc.

Fee Summary

Claimants, John Stoyka, Sr., Suzanne Willenborg, and Barbara Medeiros, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
<u>Total Fees</u>	<u>= \$ 862.50</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 562.50

Respondent, TD Waterhouse Investor Services, Inc., is liable for:

Third-Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,687.50
<u>Total Fees</u>	<u>= \$ 7,887.50</u>
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Martin I. Reisig, JD - Public Arbitrator, Presiding Chair

Jeffry M. Bauer, Esq. - Public Arbitrator

Mark R. Werder, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Martin I. Reisig, JD
Martin I. Reisig, JD
Public Arbitrator, Presiding Chair

03/07/05
Signature Date

/s/ Jeffry M. Bauer, Esq.
Jeffry M. Bauer, Esq.
Public Arbitrator

03/07/05
Signature Date

Dissenting Arbitrator:

/s/ Mark R. Werder, Esq.
Mark R. Werder, Esq.
Non-Public Arbitrator

03/07/05
Signature Date

03/07/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-06445
Award Page 4 of 4

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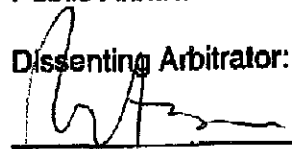
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